

Document No.	062
Approved For Release	2001/08/09 : CIA-RDP78-04718A000200140054-7
<input type="checkbox"/> Declassified	
Class. Changed to: TS S C	
Next Review Date:	
Auth.: HR 70-3	
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18 SEP 1956

TO: Acting Deputy Director (Support)

SUBJECT: Exclusion of Senior Executive Positions from the Leave System Prescribed in the Annual and Sick Leave Act of 1951, as amended

REFERENCE: Memo for A-DD/S from General Counsel dtd 24 Aug 56 (DD/S 56-3102) subject: Exemptions from the Annual and Sick Leave Act (Tab A)

1. PROBLEM

To determine whether it would be appropriate to seek exclusion from the regular leave system for positions in the Senior Executive Pay Scale.

2. FACTS BEARING ON THE PROBLEM

- a. Section 202(a)(1)(A) of the Annual and Sick Leave Act of 1951, as amended, excludes from the regular leave system "persons appointed by the President by and with the advice and consent of the Senate, or by the President alone, whose rates of basic compensation exceed the maximum rate provided in the General Schedule of the Classification Act of 1949, as amended."
- b. Section 202(a)(1)(C) of the Annual and Sick Leave Act of 1951, as amended, provides for exclusion of "such other officers (except postmasters, United States attorneys, and United States marshals) as may be designated by the President." Executive Order 10540 (Tab B) delegates to the Chairman of the United States Civil Service Commission the power to exercise this authority to designate officers to be excluded.
- c. A current listing of positions excluded under EO 10540 is attached as Tab C. No positions have been added to the list since its initial publication but several have been dropped.
- d. Positions in the Senior Executive Pay Scale do not meet the approved criteria for recommending exclusions under E.O. 10540 (Tab D).
- e. An unpublished decision (B-132698 dated 22 June 1955) of the Comptroller General holds that the term "officers" as used in section 202(a)(1)(C) of the Leave Act applies only to persons required to be appointed by the President. As a result, the list of officers previously designated under the authority of EO 10540 was revised to delete non-Presidential appointees.
- f. This Office has been unable to establish whether any positions substantially equivalent to those in the Senior Executive Pay Scale were included in the original requests for exclusions. Nor have we been able to establish that any other department or agency has sought exclusion for non-Presidential appointees since those initially designated were cancelled following the Comptroller General's ruling.

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3. **CONCLUSIONS**

- a. The legal basis for excluding positions in the Senior Executive Pay Scale, even by a new Executive Order, appears questionable in view of the Comptroller General's ruling pertaining to the statutory provision for such exclusions.
- b. Even if technical legal authority does exist for such exclusions, formal efforts to obtain exclusions for this category of officials would be unique to this Agency insofar as available information is concerned.

4. **RECOMMENDATION**

It is recommended that no further effort be made to seek exclusion from the Annual and Sick Leave Act of 1951 for persons in the Senior Executive Pay Scale.

Signed

Harrison G. Reynolds
Director of Personnel

Attachments:
Tabs A thru D

The recommendation in paragraph 4 is approved.

(signed) H. Gates Lloyd

Acting Deputy Director (Support)

SEP 25 1956

Date

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Attachments